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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF MAY 1998

BEFORE :

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

WRIT PETITION No.9059/1987.

BETWEEN :-

Sri.T.Veerabhadrappe
s/o T.Shantappa,
aged 45 years,
Mine Owner,
Car Street,
BELLARY - 583 101.

...Petitioner.

(By Sri.D.L.N. Rao, Adv.)

A N D :

1. The Ministry of Mines
& Steel, Department of Mines,
Government of India,
NEW DELHI.
2. The Union of India,
represented by its Secretary,
Department of Environment,
Ecology and Wild Life,
5B, CGO Complex, Phase-II
Lodhi Colony,
NEW DELHI.
3. The Chief Conservator
of Forests (General)
Government of Karnataka
Aranya Bhavan,
Malleswaram West,
BANGALORE-560 055.

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4. Smt.Kotri Patad Gangamma,
aged about 75 years,
w/o late Tenginakai Shantappa,
r/o Mariswamy Trust Street,
Brace Peth,
BELLARY.
5. Smt.Shanta S.Gouda,
d/o Tenginakai Shantappa,
aged about 46 years,
6, IInd Cross, VIII Main,
Byrasandra PUG Layout,
J.Nagar, I Block East,
Bangalore-11.
6. T.Mahantesh,
s/o Tenginakai,
aged about 30 years,
Mani Swamy Trust Street,
Brace Peth,
BELLARY.

...Respondents.

(By Sri.N.K.Ramesh,Addl.G.A.for Respts.)

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This writ petition filed praying to quash Annex-E dated 21-10-1986 No.8-8/86 FRY; and direct R-2 to accept the proposal made by the R-3 and direct R-1 to renew the lease in favour of the petitioner, etc.,

This writ petition coming on for hearing this day, the Court made the following order :

O R D E R

Two Hundred and Thirty Acres of Forest Land situated in Sandur Taluk of Bellary District, was granted on a long lease to the petitioner for a period of 30 years for mining iron ore. On the expiry of the lease period,

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the petitioner appears to have made an application for renewal which request was processed by the State Government at the appropriate level culminating in a recommendation to the Central Government for grant of requisite approval u/s.2 of the Forest (Conservation) Act, 1980. The Central Government made a reference to the Advisory Committee constituted under Sec.3 of the said Act and on receipt of its recommendations, declined to grant the approval prayed for. Aggrieved, the petitioner has filed the present writ petition challenging the view taken by the Central Government and for a mandamus directing acceptance of the proposal submitted by the State Government.

2. In the objections filed on behalf of the Union of India, the refusal of the proposed renewal has been justified on a three fold plea namely; (i) that the proposed renewal was bound to result in an accelerated soil erosion keeping in view the fact that the area in question was undulating with steep slopes; (ii) the proposal of the State Government did not establish the inevitability of diversion of forest land for a non-forest purpose and (iii) that the lessee had during a

period of 30 years or so made no attempt to rehabilitate the area mined by him.

3. The petitioner has in a re-joinder filed in the course of the hearing today made an attempt to meet the above line of reasoning. It is *inter alia* pointed out that the apprehension regarding soil erosion was misconceived as the Respondents had renewed leases in the adjoining areas granted in favour of M/s.K.M.Parvattamma; M/s.Tungabhadra Minerals and M/s.K.S.Veerabhadra & Co., besides leases granted in favour of Exports and Sri Abubekar. The areas leased out to the said lessees, it is alleged were at a level higher than the area claimed by the petitioner. It is also urged that the petitioner had taken steps for rehabilitation of the area that came under mining operation and that since there was hardly any tree growth in the area except over a patch of 50 acres or so, the petitioner could not be accused of having neglected efforts for afforestation of the same. It is averred that the petitioner was prepared to give up the said extent of 50 acres of forest land and pay compensatory afforestation charges payable under law for the grant of a renewal in his favour. The rejoinder further states that the State

Forest Authorities had certified the inevitability of diversion of forest, land for non-forest use and that the opinion formulated by the State Authorities, on the said aspect could not be lightly rejected by the Central Government.

4. Learned Counsel for the petitioner argued that the petitioner had a vested right to seek renewal of the lease in his favour. He relied upon Sec.8 of the Mines and Minerals (Regulation & Development) Act, 1957, in support of his submission that the mining lease could be renewed for a further period and contended that the power to renew the lease cast ^a ~~and~~ duty upon the authorities concerned to grant any such renewal having regard in particular to the fact that the petitioner had made considerable investment in carrying out the mining operations for a long stretch of 30 years or so. Reliance was placed upon the decision of the Supreme Court in STATE OF RAJASTHAN & OTHERS .v. M/S.HARISHANKAR RAJENDRAPAL / AIR 1966 SC. 296 / in support of the contention that the use of the words "may renew" appearing in Sec.8 of the Act had to be understood as "shall" making it incumbent upon the State Government to grant such a renewal.

5. Section 8 of the Mines and Minerals (Regulation & Development) Act, is an enabling provision which empowers the Authorities concerned to grant a renewal of the lease that has expired. In Hari Shankar's case (supra) while interpreting Rule 30 of the Rajasthan Mines and Minerals Concession Rules 1958, the apex Court declared that the words 'may' should be interpreted as 'shall' making it objectory for the State to renew the lease, should the lessee apply for any such renewal. The effect of the said decision was then considered by their lordships in the light of the enactment of the Forest Conservation Act, 1980 forbidding conversion of forest land to non-forest use, except with the prior approval of the Central Government in *AMBICA QUARRY WORKS ETC, .v. STATE OF GUJARAT AND OTHERS* / AIR 1987 SC 1073 /. The Court observed that the Act was promulgated in recognition of the awareness that deforestation and ecological imbalances as a result of the same had become a social menace

making it necessary to prevent further de-forestation, and ecological imbalance. It was declared that the concept of the power coupled with the duty enjoining an objection upon the Respondents to grant approval or renewals which their Lordships had referred to in Hari Shankar's case stood eroded by the mandate of the legislation manifested by the Forest conservation Act. The primary duty observed their lordship was to the community and that duty took precedence over the obligation towards the individuals. The view taken in Hari Shankar's case on the interpretation of the Rajasthan rules therefore was held to be no longer applicable in the changed legal scenario. The Court also distinguished its decision in STATE OF BIHAR .v. BANSHI RAM MODI AND OTHERS, /AIR 1985 SC 814 / and held that the ratio of the said decision was to be understood in the background of the facts of that case. Suffice it to say, that the power to grant renewal or the right to seek any such renewal as recognised under the relevant Rules, was held to be

subject to the rigors of Sec.2 of the Forest Conservation Act. The said decision therefore is a complete answer to the contentions urged on behalf of the petitioner that he had a vested right to demand a renewal which could be enforced through the medium of a writ from this Court. In the light of the supervening legislation the right to seek renewal, must be deemed to be subordinated to the provisions of Sec.2, according to which no State Government or other Authority can permit any forest land or any portion thereof to be used for any non-forest purposes except after obtaining the prior approval of the Central Government. It was not disputed that the provisions of Sec.2 would be attracted not only in cases of fresh grants but even in cases involving renewals. As a matter of fact, Ambica Quarry's case was a case of renewal of a lease that had expired. The Court held that the renewal of leases were also subject to the provisions of Sec.2. In the circumstances, therefore I have no hesitation in rejecting the first limb of the submissions made on behalf of the petitioner.

6. It was next argued that the rejection of the proposal submitted by the State Government was not supported by reasons. It was contended that the formal communication

issued by the Central Government did not set out the precise reasons for which the proposal had been turned down. It was urged that the rejection being unsupported by reasons, fell short of the legal requirements particularly when the power exercised by the Central Government was statutory in nature which could be validly invoked only if the reasons supporting the decision were disclosed.

7. It is no doubt true that the communication in question does not set out the reasons underlying the decision of the Central Government, rejecting the proposal submitted to it. It is also true that a statutory or even an administrative authority cannot afford to withhold the reasons that constitute the basis of the view taken by it. The recording of reasons by any such authority excludes the chances of arbitrariness and brings fairness and objectivity to the decision making process. That does not however necessarily imply that in order that a Government decision whether statutory or administrative in character may be upheld, the reasons underlying the same must be ^{evident} ~~discernible~~ from the formal expression of the order issued by the Government. It ^{contemporaneous} ~~contemporaneous~~ would be enough if the ~~contemporaneous~~ official record

discloses the reasons which constituted the basis of the decision. What is important is whether the competent Authority has while exercising its powers properly directed itself to the issue at hand, and arrived at the decision on the basis of material that was relevant and considerations that were germane to the controversy. If the relevant record demonstrates that the Authority competent had applied its mind properly, taken into consideration the relevant material and arrived at its decision, on the basis of considerations that were relevant, the same would constitute a substantial compliance with the requirement of law. When so viewed the decision of the Central Government in the instant case cannot be said to be falling short of any such requirements. As noticed earlier, the application of granting approval had been referred by the Central Government to the Advisory Committee constituted in terms of Sec.3 of the Act. The Advisory Committee had recommended rejection of the proposal and indicated the reasons thereof. The official record which was produced before me bears ample testimony to the fact that the matter had been referred to the Advisory Committee which had in turn recommended the rejection of the proposal for reasons as is evident from the following passage from

the record:

" The proposal was re-examined by the Advisory Committee on 23-9-86 and the Committee observed that the proposal does not indicate that any alternative was explored to avoid use of forest land. The inevitability of diversion of forest land is not established. No efforts was made by the lessee to rehabilitate the area mined by him in the past 30 years. The area subject to mining is hilly with steep slopes. Continued mining is leading to accelerated soil erosions. The Advisory Committee after careful consideration recommended that the proposal may not be approved.

Approval of MOS is solicited for accepting the recommendations of the Advisory Committee to reject the proposals of the State Government."

8. It cannot be said nor was it argued that the reasons indicated above were irrelevant or extraneous to the question of grant or refusal of the approval u/s.2 of the Act. In the circumstances, it is difficult to interfere with the decision of the Central Government only because the formal communication

issued by the Government conveying its decision, does not itself refer to the reasons underlying the decision.

19. It was then argued on behalf of the petitioner that the Advisory Committee and the Central Government acted unfairly in having refused a renewal on the ground that continued mining operations would result in accelerated soil erosion in the lease area. It was urged that leases granted to other lessees in the vicinity of this area were never judged from the said standards and in any case the norms applied to the case of the petitioners were not applied to the said cases even when the areas leased to them were situated at higher levels with steeper slopes. The argument though enticing at its face value does not appear to ^{me} ~~him~~ to be equally sound.

There is nothing before me except a bald assertion that the areas granted to other lessees have similar physical features as the one earlier granted to the petitioner. Even the assertion has been made only in the rejoinder filed during the course of arguments. In any event, it is difficult for this Court to compare the physical features or the topography of the two areas with a view to determining whether any discriminatory treatment has been meted out to the petitioner. Even assuming

that the two areas are similar to one another in location yet the opinion expressed by an expert committee that continued mining operations, would result in accelerated erosion of the area cannot be said to be so outrageously illogical as to call for interference from this Court. These are essentially matters with which the expert bodies constituted under the statute are concerned, ~~of~~ Judicial review of their decisions is not so much concerned with the correctness of such decisions as with the process by which the same are arrived at. In examining the validity of a decision taken by the Government, no matter statutory in character, this Court does not sit in Appeal so as to appraise ^{afresh} ~~the~~ material that constitutes the ^{basis thereof.} ~~basis thereof.~~ Nor is it permissible for this Court to substitute its own opinion for that of an expert body. This Court is primarily concerned with the question whether there is any illegality in the decision of any procedural irregularity of the kind which should vitiate the conclusion arrived at by the concerned authorities. No such infirmity either in the proceedings of the Advisory Committee or the Government has been pointed out to me to warrant interference in the instant case.

10. I may also at this stage deal with yet another submission made on behalf of the petitioner that the Advisory Committee and the Central Government were not justified in holding that the inevitability of diversion of forest land had not been established. It was argued that the Deputy Conservator of Forest in his Certificate had clearly stated that all other alternatives for the purpose had been explored and that demand for the required area is the minimum. The Certificate according to the learned Counsel was sufficient to meet the requirement of establishing inevitability of diversion of forest land for non-forest purposes. I have not been able to persuade myself to subscribe to that view. The Certificate appended by the Deputy Conservator of Forest at the bottom of the proposal drawn up by him is somewhat cryptic and recorded mechanically. It reads thus :-

" Certified that all other alternatives for the purposes been explored and the demand for the required area is the minimum demand for forest land".

11. It is difficult to appreciate what the Officer meant when he certifies "that all other alternatives

for the purpose have been explored". In the context of a renewal of a mining lease for extraction of iron ore, it would ordinarily suggest that the Officer has explored the possibility of extracting iron ore, from other areas and found that the same was not possible. It is however nobody's case that the Dy. Conservator of Forest was at all concerned with the question of mining or extraaction of iron ore. It is no body's case that any inspection was ever conducted at any level whatsoever for arriving at the State's requirement for iron ore, either for purposes of its own plants or as a revenue generating resource. I am -therefore inclined to view the certificate more as a mechanical rather than a purposeful exercise carried out by the State Authorities. When the Central Government insists on establishing inevitability of the diversion of forest land for non-forest use, what it obviously expects is that the State Government should satisfactorially establish that the conversion of Forest land to non-forest use is simply inevitable. That such conversion is necessary for the compelling circumstances it may set out. It is only when it is satisfactorily demonstrated that conversion of forest land for non-forest use is absolutely un-avoidable for what

ever

- ~~was~~/reason that the requirement of 'inevitability of
- diversion' can be ^{said} ~~insisted~~ to have been satisfied. In
the instant case there was no material produced be-
fore the Central Government to establish that it was
inevitable to convert the forest land for non-forest
use for mining Iron Ore. The Advisory Committee and
the Central Government were therefore perfectly justi-
fied in having rejected the proposal on the ground that
the diversion had not been shown to be inevitable.

12. So also the third and the only other reason
given by the Advisory Committee and the Central Govern-
ment for rejecting the proposal namely that the lessee
had made no attempts to rehabilitate the area for the
period of 30 years appears to me to be a weighty and
relevant consideration. It is not disputed that the
lessee had been working in this area for over 3 decades.
The proposal submitted by the State Government did not
demonstrate any concrete steps taken by the lessees
for rehabilitating the area or any attempt at fore-
station. It is not disputed that the entire 230 acre
is at present sparsely covered with trees growth except
an area of 50 acres where the growth appears relatively

better. There is nothing before me and indeed nothing was produced before the Central Government either by the petitioner or by the State Government to show that the lessee had made any investment or any conscious effort for restoration of the forest cover in the lease area. A bald assertion that the petitioner had been paying certain afforestation charges or that he had made certain attempts to plant trees does not carry conviction. The emphasis, it appears was entirely on exploiting the mineral wealth that too over a long stretch of three decades without any concern for restoration of the flora and the fauna of the area from where the lessee must have made a fortune. The Central Government and the Advisory Committee were in these circumstances perfectly justified in refusing to grant the requisite approval apprehending that the process of exploitation would go on unhindered and without any prospects of the area growing into a green forest area as it is meant to be. We can hardly forget that unless conscious efforts are made to preserve the remnant breathing spaces in the country, we may soon see the sparse forest covers also disappear. Maintenance of these forest and green patches is therefore

a national challenge not only for the present generation but even for the posterity. It is only in recognition of that compelling need that the Parliament has enacted the Conservation of Forests Act and made it essential for the State Government and the Authorities to secure its approval before a forest area could be put to non-forest use.

13. In the totality of the above circumstances therefore I see no reason to interfere with the orders passed by the Central Government or the consequential State Government's order refusing to grant lease in favour of the petitioner. The writ petition fails and is hereby dismissed but without any orders as to costs.

14. Before parting I cannot help observing that the Central Government has not been represented in these proceedings even when the matter had been heard by me for two days. I may have been disabled from proceeding with the matter if the relevant file had not been earlier produced at some stage by one of the Central Government Counsel. Mr Mukunda Menon who appeared today as a proxy Counsel expressed his inability to go on with the matter as according to him, Mr Ashok Hanana Halli, was incharge

of the matter, who was not available. It is regrettable that the Central Government should be so shabbily represented in the Court in matters of importance like the present. I only hope that the concerned would take remedial steps to avoid recurrence of such situations in future.

Sd/-
JUDGE

Abid/-
Jan/-

